

HUMAN SERVICES BOARD

INTRODUCTION

DISCUSSION

¹ Food Stamp Disqualification Hearings are conducted by Human Services Board hearing officers acting as the Department's designees. These hearings are not under the aegis of the Board or its rules under 3 V.S.A. § 3091(a).

April 22, 2009. On May 12, 2009, the petitioner, through counsel, appealed the Department's decision to the Board.

At a telephone status conference held on June 5, 2009, the petitioner's representative indicated that the sole basis of her request to set aside or invalidate her waiver was the petitioner's allegation that she did not have the capacity to understand the force and effect of the waiver she had signed.

The petitioner's representative concedes she has no claim or argument distinguishing the facts or circumstances in this matter from the 1991 decision by the Vermont Supreme Court in *Bourne v. Dept. of Social Welfare*, 156 Vt. 219. In that case the Court reversed a decision by the Human Services Board allowing that petitioner to withdraw her waiver and ordering the Department to hold a Disqualification Hearing, based on that petitioner's claim that the Department had obtained her waiver through misrepresentation and duress.

The federal and state regulations relied upon by the *Bourne* Court are essentially unchanged. This petitioner's factual allegations are indistinguishable from *Bourne*, and arguably less compelling. Unlike in *Bourne*, this petitioner does not allege any misrepresentation or imposition of duress by the Department in the obtaining of her Waiver. Also, this petitioner's appeal is less timely than in *Bourne* in that she

did not file a request for Fair hearing until *after* the Department had actually imposed the disqualification period. Thus, if anything, it must be concluded that she has even less claim to the Board's jurisdiction than did the petitioner in *Bourne*.²

ORDER

The Department's Motion to Dismiss the petitioner's appeal based on the Board's lack of subject matter jurisdiction is granted.

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²As the *Bourne* Court specifically noted, this petitioner is not without a legal remedy. It just isn't the Human Services Board.